(37,585)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 30

FRANK E. COOPER, AS TRUSTEE IN BANKRUPTCY OF WAUCHULA CENTRAL PHARMACY, INC., BANKRUPT, PETITIONER,

vs.

R. F. DASHER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOF THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

In re WAUCHULA CENTRAL PHARMACY, INC., a Corporation Organized and Existing under the Laws of the State of Florida

In Bankruptcy

AMENDED INVOLUNTARY PETITION IN BANKRUPTCY—Filed February 26, 1931

To the Honorable Judges of the above-styled court:

The petition of Tampa Drug Company, a corporation organized and existing under the laws of the State of Florida, with its principal place of business at Tampa, Florida; Eli Witt Cigar Company, a corporation organized and existing under the laws of the State of Florida, with its principal place of business at Tampa, Florida; and Turner-Taylor Company, a corporation organized and existing under the laws of the State of Florida, with its principal place of business at Tampa, Florida, respectfully shows:

(1) That Wauchula Central Pharmacy, Inc., is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at Wauchula, Florida, and is not a municipal, railroad, insurance or banking corporation, and that the said Wauchula Central Pharmacy, Inc., a Florida corporation, has for the greater portion of six (6) months last preceding the date of the filing of this Petition, had its principal place of business at Wauchula, in the County of Hardee, in said Southern District of Florida, and owes debts to and exceeding the amount of One Thousand ($1,000.00) Dollars.

[fol. 2] (2) That your Petitioners are creditors of the said Wauchula Central Pharmacy, Inc., a corporation, having provable claims, amounting in the aggregate in excess of securities held by them, to and exceeding the sum of Five

Hundred ($500.00) Dollars; that the nature and amount of your Petitioners' claims are as follows:

(a) The claim of your Petitioner, Tampa Drug Company, a Florida corporation, is a debt upon open account for merchandise sold and delivered into the Wauchula Central Pharmacy, Inc., the above named alleged bankrupt, of an actual value of Eight Hundred Nine and 34/100 ($809.34) Dollars.

(b) The claim of your Petitioner, Eli Witt Cigar Company, a Florida corporation, is a debt upon open account for merchandise sold and delivered unto the Wauchula Central Pharmacy, Inc., the above named alleged bankrupt, of an actual value of One Thousand Seven Hundred Forty-nine and 90/100 ($1,749.90) Dollars.

(c) The claim of your Petitioner, Turner-Taylor Company, a corporation under the laws of the State of Florida, is a debt upon a promissory note for merchandise sold and delivered unto the Wauchula Central Pharmacy, Inc., the above named alleged bankrupt, of an actual value of Five Hundred Fifty and No/100 ($550.00) Dollars.

3. That the said Wauchula Central Pharmacy, Inc., a corporation, the above named alleged bankrupt, is insolvent and was insolvent on the date of the filing of the original Petition herein, and that within four (4) months next preceding the date of the filing of the original involuntary Petition and within four (4) months next preceding the date of [fol. 3] the filing of this amended involuntary Petition, the Wauchula Central Pharmacy, Inc., a corporation, committed certain acts of bankruptcy, to-wit:

(a) In that it did heretofore on the 13th day of February, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Twenty-five and No/100 ($25.00) Dollars, unto the Poinsettia Dairy Products, Inc., a corporation organized and existing under the laws of the State of Florida, and having its principal place of business at Tampa, Florida, the said Poinsettia Dairy Products, Inc., being one of its creditors, with intent to prefer such creditor over its other creditors.

(b) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 27th day of Octo-

ber, A. D. 1930, while insolvent, transfer a portion of its property, to-wit, One Hundred Forty-one and 86/100 ($141.86) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(c) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 11th day of November, A. D. 1930, while insolvent, transfer a portion of its property, to-wit, Two Hundred Seventy-two and 17/100 ($272.17) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(d) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 25th day of November, A. D. 1930, while insolvent, transfer a portion of its property, to-wit: One Hundred Eighty-four and 11/100 [fol. 4] ($184.11) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(e) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 11th day of December, A. D. 1930, while insolvent, transfer a portion of its property, to-wit, Two Hundred Fifteen and 67/100 ($215.67) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(f) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 14th day of January, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, One Hundred and No/100 Dollars ($100.00) unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(g) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 21st day of January, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Sixty-eight and No/100 ($68.00) Dollars unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(h) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 28th day of January, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Thirty-six and 92/100 ($36.92) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

[fol. 5] (i) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did heretofore on the 4th day of February, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Twenty and 38/100 ($20.38) Dollars unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(j) In that the alleged bankrupt Wauchula Central Pharmacy, Inc., did heretofore on the 11th day of February, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Sixty-seven and 40/100 ($67.40) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(k) In that the alleged bankrupt, Wauchula Central Pharmacy, Inc., did her-tofore on the 20th day of February, A. D. 1931, while insolvent, transfer a portion of its property, to-wit, Forty and 54/100 ($40.54) Dollars, unto McKesson-Groover-Stewart Drug Company, a Florida corporation, one of its creditors, with intent to prefer such creditor over its other creditors.

(4) That the said Wauchula Central Pharmacy, Inc., a corporation, the above named alleged bankrupt, within four (4) months next preceding the date of the filing of the original involuntary petition and within four (4) months next preceding the date of the filing of this amended involuntary petition, committed a certain further act of bankruptcy in that on the 8th day of January, A. D. 1931, the said alleged bankrupt transferred a part of its property of great value, to-wit, approximately Three Thousand and No/100 ($3,000.00) Dollars, unto one R. F. Dasher, a stockholder and officer in the said alleged bankrupt corporation, [fol. 6] with intent to hinder, delay and defraud its creditors, or some of them. Schedule of said property, marked

Petitioner's Exhibit "A", is hereto attached and prayed to be made a part hereof.

(5) That the said Wauchula Central Pharmacy, Inc., a corporation, the above named alleged bankrupt, within four (4) months next preceding the date of the filing of the original involuntary Petition and within four (4) months next preceding the date of the filing of this amended involuntary Retition did commit a further act of bankruptcy in that it did conceal certain goods, wares and merchandise, a more particular description of which is to the Petitioners unknown, in and about the City of Wauchula and other places in the State of Florida, and more exact location of which are to your Petitioners unknown, with intent to hinder, delay and defraud its creditors or some of them.

(6) That the said Wauchula Central Pharmacy, Inc., a corporation, the above named alleged bankrupt, within four (4) months next preceding the date of the filing of the original involuntary Petition and within four (4) months next preceding the date of the filing of this amended involuntary Petition, did commit further acts of bankruptcy in that it did with intent to hinder, delay and defraud its creditors, or some of them, conceal certain goods, wares and merchandise, to-wit:

(a) Three (3) Barrels, or casks, of Coca-Cola syrup, containing approximately forty (40) gallons each; one (1) barrel, or cask, of Cherry-Smash syrup, containing approximately forty (40) gallons; and five (5) barrels, or casks, of various soda fountain syrups shipped by Bryden & Company, manufacturers of Brock confectioner's products, said barrels, or casks, containing approximately fifty (50) gallons each; all concealed and located in a shed [fol. 7] situated on a dairy farm managed and operated by one Alfred Van Vorhees approximately three and seven-tenths (3.7) miles in a northwesterly direction from the City of Wauchula, County of Harde, State of Florida.

(b) Certain goods, wares and merchandise, to-wit, bulk packages of goods of the character ordinarily sold in retail drug stores, a more particular description of which is to your Petitioners unknown, on the second floor of a brick building located in the City of Wauchula, Florida, the entrance to which is approximately two (2) doors west of the place of business occupied by the said alleged bankrupt.

(c) Certain goods, wares and merchandise, to-wit, bulk packages of goods of the character ordinarily sold in connection with retail drug stores, a more particular description of which is to your Petitioners unknown, at a farm house located upon the property known as the Charlie Rutherford property and near the Dixie Highway about one (1) mile in a southwesterly direction from the place of the business of the said alleged bankrupt.

(d) Certain goods, wares and merchandise, to-wit, bulk packages of goods of the character ordinarily sold in retail drug stores, a more particular description of which is to your Petitioners unknown, at a bungalette appurtenant to the residence of R. F. Dasher, a stockholder and officer of the said alleged bankrupt corporation, in or near the City of Wauchula, Florida.

(7) Wherefore your Petitioners pray that service of this amended involuntary Petition with a Subpœna may be made upon the said Wauchula Central Pharmacy, Inc., a Florida corporation, as provided in the Acts of Congress relating to bankruptcy, and that the said Wauchula [fols. 8 & 9] Central Pharmacy, Inc., a Florida corporation, may be adjudged by the Court to be a bankrupt within the purview of said Acts.

Tampa Drug Company, by C. L. Bromley, Treas. (Seal.) Eli Witt Cigar Company, by W. L. Vandyke. (Seal.) Turner-Taylor Company, by J. M. Turner, Jr., Pres. (Seal.) Bivens & Huggins, by W. J. Bivens, Solicitors for Petitioning Creditors.

Duly sworn to by C. L. Bromley et al. Jurats omitted in printing.

[fol. 10] EXHIBIT "A" TO PETITION

Schedule

1 Diamond Dye Case.
1 Rit Dye Case.
1 Tintex Dye Case.
1 Putnam Dye Case.
2 Pharmacopeas, 9th Edition.
2 Mortars.

2 Pessels.
1 Adding Machine, Wales.
8 Straw Holders.
8 Soda Tables.
32 Chairs.
1 Candy Case, 5 ft.
1 Magazine Rack.
3 Ice Cream Dippers.
1 Interior Display Drug Store Service Equipment, including Wall Cases, Prescription Case, Wrapping Counter, Cash Register and Stand.
All of National Show Case Equipment in Store.
1 Outside Electric Sign.
4 Light Fixtures.
2 Ceiling Fans.
2 Paper Racks.
1 Iron Safe (Cary).
1 Dip-Rite Cream Dipper.
1 National Weighing Machine (Novelty).
1 Cigar Case.
1 Ice Shaver.
1 Prescription Scale.
1 Ice Box.
1 Lemon Squeezer.
2 Milk Shakers.
1 Cigar Lighter.
1 Label Cabinet,
1 Pill Tile.
1 Syrup Percolator.
[fol. 11] 1 Cash Register, Factory No. 2718764.
1 Cash Register, Factory No. 2718490-175.
1 Prescription Counter.
6 Superior Chain Drive Carbonator AC 110 Complete.
1 Liquid Carbonic Soda Fountain, 12 ft. Mechanical Soda Fountain Equipped with Frigidair-, ½ Horse Power complete.
1 Underwood Typewriter.
1 Sun-Kist Juice Extractor.
1 Spatula.
6 Curb Service Trays.
1 Hot Chocolate Percolator.
1 Cone Holder.
1 Waterman Fountain Pen Case.

IN UNITED STATES DISTRICT COURT

No. 2420

In Bankruptcy

[Title omitted]

ADJUDICATION OF BANKRUPTCY AND ORDER OF REFERENCE—Filed and Entered March 21, 1931

At Tampa, in said District, on the 26th day of February, A. D. 1931, before the Honorable Alexander Akerman, Judge of said Court in Bankruptcy, the Amended Petition of Tampa Drug Company, a corporation, et al., that Wauchula Central Pharmacy, Inc., a corporation be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said Wauchula Central Pharmacy, Inc., a corporation is hereby declared and adjudged a bankrupt accordingly.

[fol. 12] It is therefore ordered, that upon the Amended Petition filed in this Court by or against said bankrupt on the 26th day of February, A. D. 1931, said matter be referred to H. P. Baya, Esq., one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Wauchula Central Pharmacy, Inc., a corporation shall attend before said Referee on the 6th day of April, at Tampa, Fla., and thenceforth shall submit to such orders as may be made by said Referee of by this Court relating to said bankruptcy.

Witness the Honorable Alexander Akerman, Judge of the said Court, and the seal thereof, at Tampa in said District, on the 21st day of March, A. D. 1931.

Edwin R. Williams, Clerk, by Louise Dykeman, Deputy Clerk. (Seal of the Court.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ORDER UPON R. F. DASHER, PRESIDENT, TO TURN OVER $23,101.84 ASSETS OF THE BANKRUPT—Filed July 7, 1931

To the Honorable H. P. Baya, referee in bankruptcy:

Your undersigned Trustee, Frank E. Cooper, heretofore appointed and qualified as Trustee in Bankruptcy in this

cause, respectfully shows unto the Court that it appears [fol. 13] from the testimony of R. F. Dasher, President of the bankrupt corporation herein, and from the records of the Bankrupt and of the said R. F. Dasher now in possession of your undersigned Trustee and duly filed in evidence herein, that on May 26, 1930, the date on which the bankrupt corporation started transacting business, that it possessed assets in the sum of Fifteen Thousand Dollars ($15,000.00) and negligible liabilities; that this Fifteen Thousand Dollars ($15,000.00) consisted of a value of Five Thousand Two Hundred and Sixty Dollars ($5,260.00) in fixtures and a value of Nine Thousand Seven Hundred and Forty Dollars ($9,740.00) in merchandise; that subsequent to the incorporation and prior to bankruptcy the bankrupt corporation actually received merchandise purchased by it in the sum of Sixty-four Thousand Fifty-one Dollars and Eighty-two Cents ($64,051.82); that, therefore, between incorporation and bankruptcy the bankrupt corporation received in merchandise bought for sale the value of Seventy-three Thousand, Seven Hundred Ninety-one Dollars and Eighty-two Cents ($73,791.82); that the total aggregate sales of the said corporation during its corporate existence and prior to bankruptcy aggregated only Thirty Thousand, Seven Hundred Forty-one Dollars and Thirty Cents ($30,741.30) at retail prices, which amounts to Twenty-one Thousand, Five Hundred Eighteen Dollars and Ninety-four Cents ($21,518.94) at cost; that the total value of merchandise delivered to your receiver by the said bankrupt was the sum of Twenty-nine Thousand, One Hundred Seventy-one Dollars and Four Cents ($29,171.04), whereby the said bankrupt has thus far accounted to this Court only for merchandise in the sum of Fifty Thousand, Six Hundred Eighty-nine Dollars and Ninety-eight Cents ($40,689.98), and has withheld from this Court and from your undersigned Trustee, as an officer thereof, the remainder of the merchandise, or the [fol. 14] proceeds thereof, and has failed and neglected and refused to deliver such remainder of the merchandise, or the proceeds or value thereof, to your undersigned Trustee; that such remainder amounts to a value of Twenty-three Thousand, One Hundred and One Dollars and Eighty-four Cents ($23,101.84).

And your undersigned Trustee further respectfully shows unto the Court that it appears from the testimony of the said R. F. Dasher and from the records of the Bankrupt corporation and exhibits filed in this cause that the bankrupt corporation was organized for the sole purpose of taking over the individual business theretofore owned exclusively by R. F. Dasher, that the sole consideration for issuance of any stock therein was the transfer of assets belonging to R. F. Dasher; that there are and have always been only three stockholders, officers and directors in the said corporation, to-wit: R. F. Dasher, his wife and infant child; that subsequent to incorporation and prior to bankruptcy the exclusive charge, management and control of the affairs of the corporation and acquisition and disposition of its assets and maintenance of its accounts rested in R. F. Dasher and under his personal control and supervision; that no other stockholder, officer or director of the said corporation had or exercised any control, management or supervision of such assets or accounts; that the said R. F. Dasher managed the affairs of the said corporation, to all intents and purposes, as thoroughly and completely as he had managed the affairs of the said business prior to its incorporation, and is personally acquainted with and accountable for the disposition of its assets, and, therefore, now has the possession and control of the said assets of the bankrupt in the sum of Twenty-three Thousand, One Hundred One Dollars and Eighty-four Cents ($23,101.84) yet undelivered to your undersigned Trustee, as aforesaid.

[fol. 15] Wherefore, your undersigned Trustee respectfully prays that this Court may immediately enter an order requiring the said R. F. Dasher, President of the bankrupt corporation, as aforesaid, on or before a day certain, to show cause unto this Court, if any he can, why an order should not be entered requiring him to immediately and before a time certain to deliver and surrender to your undersigned Trustee all the remainder of the assets of the aforesaid bankrupt corporation in his custody and control and not heretofore accounted for and surrendered to your undersigned Trustee, to-wit, assets of a value of Twenty-three Thousand, One Hundred and One Dollars and Eighty-four Cents ($23,101.84), or the proceeds or value thereof; that such order to show cause may be immediately served

upon the said R. F. Dasher, or his Attorney, and that he may be required on or before a time therein set to be prepared to show cause and present evidence why such turn over order should not be entered; and that upon the failure of the said R. F. Dasher to show satisfactory and reasonable cause why he should not be required to turn over and deliver such unaccounted for assets that this Honorable Court may enter an order requiring the said R. F. Dasher, President and sole executive manager of said bankrupt corporation, as aforesaid, on or before a day certain to be therein named, to surrender, turn over and deliver to your undersigned Trustee all the assets of the aforesaid bankrupt in his possession and control and not heretofore surrendered, turned over and accounted for, to-wit: merchandise of a value of Twenty-three Thousand, One Hundred and One Dollars and Eighty-four Cents ($23,101.84), or the proceeds or reasonable value thereof.

And your petitioner will ever pray.

(Signed) Frank E. Cooper, Trustee. (Signed) C. Edmund Wirth, Attorney for Trustee.

[fol. 16] *Duly sworn to by Frank E. Cooper. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE OF R. F. DASHER

Now comes R. F. Dasher, the respondent in the petition heretofore filed by Frank E. Cooper, Trustee, on the 7th day of July, A. D. 1931, by his undersigned attorneys, and reserving unto himself all manner of exceptions and objections that may be made to said petition in the form thereof, for answer to said petition and the rule of Court issued thereon, this respondent says:

That this Honorable Court is without jurisdiction to proceed to determine the issues raised by said petition in a summary manner such as is sought to be undertaken in this case for the following reasons, to-wit:

[fol. 17] Because there is no provision in the United States Bankruptcy laws for a proceeding such as is sought to be maintained by this petition.

Because said petition is couched in such general language that it is impossible for the respondent or anyone else to determine what property of the bankrupt corporation this respondent is charged with having in his possession or withholding from said bankrupt's Trustee.

Because said petition describes no property whatsoever and does not allege or show that any property belonging to the bankrupt or the estate of the bankrupt is now in the possession of this respondent.

Because said petition is without precedent in law and is trifling, frivolous and without merit.

Further answering said petition, respondent avers that he, as President of the bankrupt corporation, has turned over and delivered to the Receiver, and Trustee who succeeded said Receiver, all of the assets, books of account and properties of said bankrupt corporation, of every nature, kind and character whatsoever, within the knowledge of this respondent, and that there are no assets of said bankrupt corporation or the estate of said bankrupt corporation, within the knowledge of this respondent, except those held by the Trustee; that this respondent has never at any time subsequent to the bankruptcy of said corporation had in his possession, custody or control any properties or assets of said corporation of any kind, nature or description whatsoever.

Further answering said petition, this respondent specifically denies that he has $23,101.84 of the assets of the bankrupt in money, property, choses in action, or any other kind or character of property, real, personal or mixed, but avers [fol. 18] that all assets of every character, kind and nature of said bankrupt are now in the possession of the Trustee, so far as the knowledge of this respondent extends, and alleges the truth and fact to be that, as President of said bankrupt corporation, he has caused the schedules in bankruptcy to be made out, signed, sworn to and filed, in compliance with the Court's directions and that the same reflect the true status of the corporation's fiscal affairs as far as it lies within the power of this respondent to set up the same.

This respondent further charges that from the time of the filing of the involuntary petition in bankruptcy against the corporation aforesaid, this respondent individually and as President of said corporation has complied fully and in

good faith with every provision of the bankruptcy laws of the United States as far as it lies within his power so to do.

Wherefore, this respondent respectfully represents unto Your Honor that this Honorable Court is without jurisdiction to proceed in a summary manner to determine the rights of your respondent in this proceeding and thereupon, having fully answered the aforesaid rule, this respondent prays to be hence dismissed with his costs in this behalf most wrongfully sustained.

R. F. Dasher, Respondent, Whitaker Bros., Frank Q. Phillips, Attorneys for Respondent.

Duly sworn to by R. F. Dasher. Jurat omitted in printing.

[fol. 19] IN UNITED STATES DISTRICT COURT

ORDER OF REFEREE DIRECTING DASHER TO TURN OVER PROPERTY TO TRUSTEE—Dec. 10, 1931

At Tampa, Florida, this cause coming on to be heard upon an order heretofore entered by the Court upon petition of Frank E. Cooper, Trustee in Bankruptcy, praying that R. F. Dasher show cause why he should not be ordered to turn over to the said Trustee assets of the corporation in his hands in the sum of $23,101.84, and the Answer of the said R. F. Dasher to the order above mentioned, and the testimony taken before the Court at which all parties in interest were present.

The Trustee in Bankruptcy was represented by C. Edmund Worth and, associated with him, W. J. Bivens, Attorney for Petitioning Creditors. R. F. Dasher was represented by Tom Whitaker and Frank Phillips.

R. F. Dasher, President of the bankrupt corporation, in the beginning objected to the summary jurisdiction of the Court, which said objections were overruled. Whereupon the Answer of R. F. Dasher was filed and the testi-
[fol. 20] mony taken. The testimony in this case has been voluminous, and there have been a large number of exhibits and a great number of witnesses brought before the Court, whose testimony has been carefully considered.

The following facts appear from the testimony:

That upon the appointment of a Receiver by the District Judge, the said Frank E. Cooper, so appointed, undertook to take over immediately the possession of all of the assets, effects and property of the above named bankrupt; that the assets taken over by the said Receiver were found in some eight (8) different places:

1st. In the retail drug store operated at Wauchula, Florida.

2nd. In a warehouse or storage room next door to the bankrupt's store.

3rd. In a garage under the bungalette home of R. F. Dasher, President of the bankrupt corporation.

4th. In a storage room upstairs over the retail store of Wauchula Dry Goods Company, securely partitioned off and locked from the premises of the said Dry Goods Company, but accessible only through them.

5th. In certain storage rooms behind an unfinished garage under the bungalette residence of one Charles B. Rutherford near Wauchula, Florida.

6th. In a bed room in the residence quarters of Charles B. Rutherford on the second floor over the unfinished garage mentioned above and accessible only through the living quarters of the said Rutherford.

7th. In a lean-to shelter on the dairy farm of one Alfred Van Voorhees, some three miles from Wauchula, Florida, on an unimproved country road.

[fol. 21] 8th. In a shack some seven (7) miles from Wauchula, Florida, on an unimproved road in a sparsely populated locality.

That none of said storage places save those mentioned in sub-paragraphs 1st, 2nd and 3rd, were known to exist as storage places of assets of the bankrupt corporation by any of the creditors, employees of the bankrupt, or by the public generally, save only by the said R. F. Dasher and the persons who had charge of such storage for him. That all of the merchandise mentioned in sub-paragraphs 7th and 8th, had been moved into these places during the night time and early morning of the night immediately following the filing of the Petition in Bankruptcy herein, and, that arrangements had been made for the use of the shanty and of the Van Voorhees shed during the same day on which the Petition in Bankruptcy was filed. That during that

day, or the succeeding day, certain rooms in a rooming house located over the drug store had been rented by one Schwinn, and has been used by the said R. F. Dasher temporarily for the storage of certain merchandise which was again removed before the Receiver of this Court took charge a few days later. That within a few days prior to bankruptcy there had been also stored a large number of barrels of fountain sirups in the garage at the home of one William Cliett in Bowling Green, Florida, the property of the bankrupt, which were, however, again transferred to some of the other storage places prior to the receivership. That shortly prior to bankruptcy the premises of one McGinnis had also been used as a storage place for merchandise of the bankrupt, but, that at the time the Receiver took charge there was no merchandise found there. That all of the merchandise found in locations mentioned in sub-paragraphs 4th, 5th, 6th, 7th and 8th, which was in its original containers, had had the name of the addressee removed, or attempted to be removed, by cutting the same [fol. 22] out in the case of pasteboard cartons, and, by painting over with black paint in the case of wooden packages. That a large quantity of the merchandise consisted of re-packed cases of assorted merchandise of quantities typical of those usually carried on the shelves of a retail store with inventories on the outside of each carton as to what the contents of such re-packed cases were. That no officer or regular employee of the bankrupt corporation was allowed to have any access to or knowledge of the existence of any of the merchandise stored in locations mentioned in sub-paragraphs 4th, 5th, 6th, 7th and 8th, above. But that the said R. F. Dasher, President of the said bankrupt corporation, and its sole executive manager, personally exercised exclusive custody over all the assets and merchandise of the bankrupt corporation, save such as were located in sub-paragraphs 1st and 2nd, above. That while regular draymen did all regular hauling to places mentioned in sub-pargraphs 1st, 2nd and 3rd, the hauling done to the other locations was always done by borrowed or rented trucks of people engaged in other business. That while the Receiver took charge of all the assets mentioned in the locations in the eight (8) sub-paragraphs above, certain other assets, to-wit: the Tampa Straights cigars mentioned hereinafter in this Order appeared in the

custody of the said Dasher some seven months and more subsequent to the bankruptcy; and, that certain other assets of the bankrupt, to-wit: the other specific items hereinafter enumerated in this Order were bought on the credit of the bankrupt but appropriated to the personal use of the said R. F. Dasher; that about eight months prior to bankruptcy a Chattel Mortgage was attempted to be placed on all the fixtures and equipment of the bankrupt corporation in favor of a brother of the said R. F. Dasher, and, subsequently, and in less than two months of bankruptcy this was replaced by a Bill of Sale to the said R. F. Dasher, [fol. 23] himself, both of which instruments have been heretofore held by the undersigned and the District Judge to have been fictitious, without consideration and a mere sham. That the said R. F. Dasher procured the lease on the premises where the corporation did business in his own name and attempted to claim it against the creditors of the corporation in this Court, although the corporation had paid the entire consideration therefor. That within sixty (60) days prior to bankruptcy the only other remaining property of the said R. F. Dasher of any value, to-wit: an orange grove was incorporated and the bulk of the stock in said corporation, as in the case of this bankrupt corporation, placed in the names of the wife and infant son of the said R. F. Dasher.

I have carefully considered the testimony of all parties, bearing in mind the rule in this class of cases, that the right of a Trustee to a Turn Over Order should be supported by clear and convincing evidence, and that a mere preponderance is not sufficient.

Oriel vs. Russell, Prela vs. Hubshman, 73 L. Ed. 419, 278 U. S. 358.

To the testimony of Charles B. Rutherford, Alfred Van Voorhees, J. R. Powell and Ramon McLeod, when considered in connection with their appearance and demeanor on the witness stand, and, in the case of Van Voorhees and Powell in connection with their prior contradictory statements and their attempted explanations thereof, I can give no credence. I have carefully considered the evidence of all the other witnesses and of the various exhibits shown in evidence, and, particularly, the testimony of R. F. Dasher himself, and his explanations and accountings for his property,

and, have considered the interest of the infant son and wife [fol. 24] of the said Dasher, as testified to by him, and, from this consideration, I further find the following facts:

That on May 26th, 1930, at the beginning of the bankrupt corporation's existence, the stock of merchandise on hand by the bankrupt corporation was, according to the audit of the bankrupt's books, $8,940.27, and, according to the testimony of the said R. F. Dasher, at least $8,500. In a desire to rely only on testimony that is clear and convincing, I have used the latter figure.

That there was purchased, during the active life of the bankrupt corporation, merchandise of a cost value of $64,051.82, as shown by the books of the said corporation, kept by R. F. Dasher himself, and verified by the auditor as accurate by other accounting methods, all of which merchandise was purchased by and actually received by the bankrupt between its incorporation May 26th, 1930, and prior to the Bankruptcy Receivership February 26th, 1931, making a total of $72,551.82 in merchandise actually received by the bankrupt during its corporate existence.

That the total sales of the corporation during this period as reflected by its books were the sum of $30,741.34 at retail prices. That this sum included a gross profit of not less than twenty-five per cent (25%), (or, $7,685.33), according to the testimony of R. F. Dasher himself. In other words, the cost value of the merchandise so sold by the bankrupt during its existence was $23,056.01. This portion of the assets standing thus accounted for would leave a balance of $49,495.81 assets of the bankrupt remaining in the hands of the said R. F. Dasher as its sole custodian at the date of bankruptcy.

The inventory of all the merchandise on hand at the date of bankruptcy, which actually came into the possession of the Receiver from each of the several storage places above mentioned, made at cost price by competent appraisers, was [fol. 25] of a value of $29,171.04. The accuracy of this inventory at cost price was fully inquired into and, while it appears that the said inventory is accurate and its accuracy has not been impeached by the respondent, I find that the maximum possible error in valuations by the officers of this Court could not exceed two per cent (2%). I have, there-

fore, given the benefit of this possible error to the bankrupt by adding to the above appraised figures two per cent (2%) thereof, (or $583.42), and thereby valuing the merchandise received by this Court in the sum of $29,754.46, merchandise which value I find has been accounted for by the respondent by delivery to the proper officers of this Court. This sum deducted from $49,495.81, above mentioned, leaves a balance of merchandise of a value of $19,741.35 unaccounted for. That these goods were on hand at the date of bankruptcy and do not represent any slow leakage over the entire period is borne out by a study of the last four and a fraction months of operation. From October 1, 1930, to bankruptcy, the corporation bought and received new merchandise of a cost value of nearly $45,000.00. It sold, during that period, at retail price only $9,500.00 (which is equivalent to a cost value of about $7,000.00), leaving a net accumulation of unsold merchandise between October 1st, 1930, bankruptcy, of about $38,000.00, in addition to that on hand at that date (which stock on hand October 1st, 1930, must have been pretty well filled out, for from May 26th, 1930, to October 1st, 1930, the corporation's purchases at wholesale cost had exceeded its sales at retail price by more than $2,000.00). Yet, only about $29,000.00 at wholesale cost was found on hand by the Receiver.

However, I find that certain specific merchandise hereinafter specifically mentioned and described, and specifically ordered delivered, is of a value of $583.69, leaving a balance of merchandise in the hands of the said R. F. Dasher at the time of bankruptcy at a cost price value of $19,157.66 [fol. 26] of a class of merchandise shown by the proofs of claim to have been purchased on the credit of the bankrupt corporation and delivered to it, and, of such a class of merchandise as is usually carried and sold in a retail drug store, but, which is not capable of a more specific description, such more specific description being known only to the respondent in this cause.

It is therefore ordered, adjudged and decreed that the said R. F. Dasher, the President and executive manager of the bankrupt corporation, do, within ten (10) days from the date of this Order, turn over and deliver to Frank E. Cooper, as Trustee in Bankruptcy of the above named bankrupt, the following goods, wares and merchandise pur-

chased from Albert Pick-Barth Company, Inc., charged to the account of the bankrupt and appropriated to the sole and exclusive use of the said R. F. Dasher, to-wit:

2 #17E386 Rugs, size 9'x12' @ $61.50 each, aggregating a value of	$123.00
1 #17E375 Rug, size 9'x12' @	39.50
3 #17E1126F Rugs, size 24"x36" @ $2.95	8.85
3 doz. #5E318 Bath Towels @ $4.85 doz.	14.55
2 doz. #5E345 Massage Towels @ $2.95 doz.	5.90
2 doz. #5E8504 Wash Cloths @ 85¢ doz	1.70
3 #5E2288 Bed Covers @ $8.75	26.25
2 #5E2553 Bed Spreads @ $6.65	13.30
4 #5E809 Blankets @ $11.90	47.60
4 prs. #5E844 Blankets @ $6.75 pr	27.00
6 #17E729 Rugs 27"x54" @ $11.65	69.90
2 #15E6142 DF Bath Room Cabinets @ $9.85	19.70
1 #5E2553F Bed Spread Rose	6.65

and, also, the following goods, wares and merchandise purchased from Butler Brothers & Company, charged to the account of the bankrupt and appropriated to the sole and [fol. 27] exclusive use of the said R. F. Dasher, to-wit:

3 pr. 5K4951 Shoes @ $3.50 pr.	$10.50
1½ doz. G. S. 745 Shirts @ $24.00 doz.	36.00
½ doz. 7D2261 Ties at $18.00 doz.	9.00
1 1 AX-1776 Coat @ $14.00	14.00
1 doz. GS-2790 Shirts @ $8.50 doz	8.50

and, also, the following goods, wares and merchandise purchased from Art Colony Industries, charged to the bankrupt and appropriated to the sole and exclusive use of the said R. F. Dasher, to-wit:

1 A1044 Dining Room Fixtures	$14.75
1 X1044 Living Room Fixture	14.75
6 A1013 Ceiling Fixtures @ $2.13 each	12.78
6 A 926 Electric Brackets @ $2.88 each	17.28
3 A1014 Ceiling Fixtures @ $2.63 each	7.89
1 pr. C-10 Andirons @ $6.49	6.49
1 A 794 Fire Screen	12.25

all of the said merchandise having been withheld by the said R. F. Dasher from the officers of this Court at the time

of adjudication in bankruptcy herein and at all subsequent times; and, also, to-wit: 8 boxes of Tampa Nugget cigars, containing fifty (50) cigars each, obtained by the said R. F. Dasher after bankruptcy from Eli Witt Cigar Company, in exchange for 8 boxes Tampa Straights cigars, containing fifty (50) cigars each, which said Tampa Straights cigars had been withheld by the said R. F. Dasher from the officers of this Court at the time of delivery of the assets of the said bankrupt corporation to the Receiver herein and at all subsequent times, said cigars being of a value of the sum of $15.60.

[fol. 28] It is further ordered, adjudged and decreed, that the said R. F. Dasher do further, within such ten (10) days from this date, turn over and deliver to Frank E. Cooper, Trustee in Bankruptcy in this cause, other goods, wares and merchandise of the said bankrupt corporation purchased and owned by the said bankrupt corporation, and withheld from the officers of this Court at the time of bankruptcy by the said R. F. Dasher, of a value of $19,157.66, said goods, wares and merchandise being of the character of goods, wares and merchandise such as is shown by the proofs of claim in this cause to have been purchased by the bankrupt corporation and such as is usually carried, sold and offered for sale in drug stores of the character operated by the bankrupt corporation prior to bankruptcy, and being exclusively goods, wares and merchandise purchased by and delivered to the said bankrupt corporation and withheld by the said R. F. Dasher from the officers of this Court at the time of bankruptcy.

Done and ordered at Tampa, Florida, this the 10 day of December, A. D. 1931.

(Signed) H. P. Baya, Referee.

IN UNITED STATES DISTRICT COURT

PETITION OF DASHER FOR REVIEW—Filed Dec. 19, 1931

To H. P. Baya, referee in bankruptcy:

Your petitioner, R. F. Dasher, President and executive manager of the bankrupt corporation, shows that he is the respondent in a certain summary proceedings wherein

Frank E. Cooper, Trustee of the above named bankrupt, [fol. 29] prays for an order requiring this respondent to surrender $23,101.84, said petition being filed on the 7th day of July, A. D. 1931; that in the course of the proceedings on said petition, an order was entered on the — day of ——, A. D. 1931, and by reference made a part hereof, which said order was interlocutory in form and merely asserted the jurisdiction of the Referee to proceed in a summary manner in said cause, to which said order exception was duly noted by the respondent, and on the 10th day of December, A. D. 1931, a final order was made in said proceedings, sustaining the jurisdiction of the Referee to proceed in a summary manner and granting other relief to the Trustee, as will more fully appear by reference to a copy of said order hereto annexed, marked Exhibit "A", and made a part hereof;

That such orders and each of them was and is erroneous in that,

1st. That said Referee was without jurisdiction to make said orders, or either of them, in the premises.

2nd. That said orders and each of them was and is contrary to the evidence as shown by the record herein, and contrary to law.

3rd. That no property whatsoever was described in the petition which is alleged to have been withheld by the respondent from the Receiver and Trustee.

4th. Because said orders and each of them were without evidence to support them.

5th. Because the final order entered in said cause is contrary to the evidence, as shown by the record herein.

[fol. 30] 6th. Because said final order directs the respondent to turn over property to the Trustee which never at any time belonged to the bankrupt corporation or its estate.

7th. Because said final order only describes a small amount of property and the only evidence introduced in the record establishes that bankrupt corporation was fully paid for all of such property.

8th. Because the record in said cause fails to establish by clear and convincing proof that this respondent has in

his possession any property belonging to the bankrupt corporation or its estate.

9th. Because said final order only describes a small amount of personal property, all of which the record shows was fully paid for by the persons receiving the same from the bankrupt corporation.

10th. Because it affirmatively appears from the record in this cause, including the pleadings and evidence, that the rights of the Trustee, if any there be, in this relation, could only be maintained in a plenary suit brought for that purpose.

11th. Because there is no evidence to support the final order entered in said cause.

Wherefore your petitioner, feeling aggrieved because of such orders, prays that the same may be reviewed as provided by the Bankruptcy Act of 1898, and General Order XXVII.

Done this 19th day of December, A. D. 1931.

(Signed) R. F. Dasher, Petitioner, by Tom Whitaker, (Signed) Frank T. Phillips, (Signed) Whitaker Bros., Attorneys for Petitioner.

[fol. 31] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF REVIEW—Filed March 7, 1932

To the Honorable Alexander Akerman, Judge of the United States District Court, Southern District of Florida:

I, H. P. Baya, a Referee in Bankruptcy of the above Court, do hereby certify:

That in the course of the procedure in the above entitled cause and on, to-wit, the 10th day of December, A. D. 1931, an order was entered in the above entitled cause upon petition of Frank E. Cooper, Trustee in Bankruptcy, adjudging and decreeing that R. F. Dasher, the President and Executive Manager of the Wauchula Central Pharmacy, Inc., a corporation, bankrupt, turn over and deliver to the said Frank E. Cooper, as Trustee in Bankruptcy, certain

specific personal properties enumerated in said order, and of the value of $583.69.

And further ordering, adjudging and decreeing that the said R. F. Dasher aforesaid do within ten (10) days from said date turn over and deliver to Frank E. Cooper, Trustee in Bankruptcy, certain other goods, wares and merchandise of the bankrupt corporation purchased and owned by the said bankrupt corporation prior to bankruptcy and withheld from said Trustee, and in the value of $19,157.66.

The aforesaid orders having been entered after the taking of testimony in which all parties in interest were present, and after argument of counsel.

[fol. 32] The sole questions to be determined by the Court are these:

First. Whether the Court of Bankruptcy was without jurisdiction to hear and determine under the order entered as aforesaid and the answer of R. F. Dasher, respondent, in a summary procedure the issues involved, or whether the Trustee should be remitted to a plenary action against the said R. F. Dasher. Upon this issue the undersigned overruled the objection to the jurisdiction, and held that the Court had jurisdiction to inquire into the issues made for the purpose of determining whether or not the said R. F. Dasher, an officer of said corporation, had turned over and delivered to the said Frank E. Cooper, Trustee in Bankruptcy, the certain assets of the alleged value of $23,101.84 alleged in said petition to be in his possession and control as an officer of the said corporation.

The Answer of the said R. F. Dasher specifically denied that he had assets of said alleged value or any other kind or character of property, assets of the bankrupt aforesaid, in his custody or control, and further alleged that as President of the bankrupt corporation he had turned over and delivered to the Receiver and Trustee who succeeded the said Receiver all assets of every kind or character within his knowledge, and that there were no assets of said estate within his knowledge except those held by Frank E. Cooper, Trustee in Bankruptcy, and further alleged that he had never at any time subsequent to the bankruptcy had in his possession, custody or control any property or assets of said bankrupt corporation of any nature, kind or description whatsoever.

The Referee held that an issue was squarely made whether or not the said R. F. Dasher, an officer, an agent, or trustee for the bankrupt, held property in his possession as such officer, agent or trustee for which he would be accountable in the Court of Bankruptcy, and that if upon [fol. 33] the issue so made it should be determined that he held property of the bankrupt aforesaid as an officer, agent or trustee, that the Court had full summary jurisdiction to enter a turn-over order directing that any and all assets found to be held by him as such be turned over and delivered to the Trustee in Bankruptcy of said bankrupt corporation.

Second. The Referee having determined the foregoing, and having taken jurisdiction, found the following issues of fact:

(a) That certain specific personal property fully set forth in the order entered and of the value of $583.69, coming into the sole and exclusive use of the said R. F. Dasher, had been withheld from the said Frank E. Cooper, Trustee in Bankruptcy.

(b) And further found that other goods, wares and merchandise of the bankrupt aforesaid purchased and owned by said bankrupt corporation and of the value of $19,157.66, came into the possession of the bankrupt corporation prior to bankruptcy.

(c) That all of the assets of the bankrupt corporation were under the direct control and management of R. F. Dasher, its President and Manager.

(d) That the said assets of the value of $19,157.66 shown by the testimony to have come into the possession of the Wauchula Central Pharmacy, bankrupt, as aforesaid, and in the exclusive control and management of R. F. Dasher, its President and Manager, has not been put into the possession of Frank E. Cooper, Trustee in Bankruptcy, nor has its absence from the assets in the control of the said R. F. Dasher as President and Manager been in any manner accounted for.

[fol. 34] The specific findings of fact are not enumerated herein, but are fully set forth in the order of the Court directing the turn-over of assets above referred to to Frank E. Cooper, Trustee.

The question for determination of the Court is whether the Referee in Bankruptcy erred,

First, in taking jurisdiction as hereinabove stated; and

Second, in entering the order directing the said R. F. Dasher to turn over and deliver to Frank E. Cooper, Trustee in Bankruptcy, within ten (10) days from the date of said order the assets hereinabove mentioned.

I hand up for the consideration of the Court the following:

(1) The petition of the Trustee for the turn-over order, filed on July 7, 1931.

(2) The answer of R. F. Dasher filed on, to-wit, the 14th day of July, A. D. 1931.

(3) The order directing the said R. F. Dasher to turn over and deliver to Frank E. Cooper, Trustee in Bankruptcy, the assets mentioned in said turn-over order within ten (10) days from the date thereof, filed December 10, 1931.

(4) All testimony taken and exhibits in said cause at the various hearings thereon.

(5) The Petition for Review filed on the 19th day of December, A. D. 1931.

(6) This Certificate of Review.

[fol. 35] (7) In order that the Court might be fully advised, I directed that upon final hearing briefs of the facts upon which the Trustee and respondent relied, together with citations of authority be filed with me, and for the information of the Court I am likewise handing up the briefs filed by C. Edmund Worth, Attorney for the Trustee. Counsel for Respondent filed no brief with me, but at final hearing presented their oral argument and citations of authority.

All of which is respectfully submitted this the 25th day of January, A. D. 1932.

(Signed) H. P. Baya, Referee in Bankruptcy.

IN UNITED STATES DISTRICT COURT

ORDER ON REVIEW SUSTAINING ORDER OF REFEREE REQUIRING R. F. DASHER TO TURN OVER AND DELIVER CERTAIN ASSETS OF THE BANKRUPT—April 26, 1932

Frank E. Cooper, as Trustee in Bankruptcy in the above matter, having on July 7th, 1931, filed a petition with the Referee to require R. F. Dasher, President and sole executive manager of the bankrupt corporation, to turn over and deliver certain assets of the bankrupt corporation to the said Trustee, and the said R. F. Dasher having objected to the jurisdiction of the Referee and of this Court to inquire into the matters referred to in the said petition in a summary proceeding, and said objection having been over-[fol. 36] ruled by the Referee, and, thereafter the said R. F. Dasher having made answer on July 14th, 1931, and, thereafter after the receipt of voluminous evidence the Referee having on December 10th, 1931, entered an Order directing the said R. F. Dasher to turn over and deliver to the Trustee in Bankruptcy herein certain enumerated assets found by the said Referee to have been withheld by the said R. F. Dasher from the said Trustee, minutely described with great particularity in the said Order, and, also, certain other assets consisting of goods, wares and merchandise of a value of Nineteen Thousand One Hundred Fifty-seven and 66/100 Dollars ($19,157.66), being the character of good-, wares and merchandise such as was shown by the proofs of claim in this cause to have been purchased by the bankrupt corporation, and such as is usually carried, sold, and offered for sale in drug stores of the character operated by the bankrupt corporation prior to bankruptcy, and being exclusively goods, wares and merchandise purchased by and delivered to the said bankrupt corporation and withheld by the said R. F. Dasher from the officers of this Court at the time of bankruptcy, and the said R. F. Dasher having brought the said Order here upon his petition for review and the Court having heard and considered the arguments of respective counsel and having considered the error assigned by the said R. F. Dasher, and it appearing to the satisfaction of the Court that the said Order of the Referee is just and correct and conforms to the law and the evidence and is supported by

clear and convincing evidence, and this Court having announced at the oral argument of this cause April 9th, 1932, its intention to enter this Order confirming the said Order of the Referee, but, having postponed the entry thereof until this date at the request of the Attorneys for the said R. F. Dasher,

It is hereby ordered, adjudged and decreed that the Order of the Honorable H. P. Baya, Referee in Bank-[fol. 37] ruptcy, entered in the above entitled cause on December 10th, 1931, requiring the said R. F. Dasher to turn over and deliver to Frank E. Cooper, as Trustee herein, the property hereinabove referred to, be, and the same is, hereby approved, sustained and affirmed.

It is further ordered, adjudged and decreed that said R. F. Dasher do, within one (1) day from this date, turn over and deliver unto the said Frank E. Cooper, as such Trustee, each, all and every of the property mentioned, described, and/or referred to in the said Order.

Done and ordered at Chambers, this 26th day of April, A. D. 1932.

(Signed) Alexander Akerman, District Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed April 25, 1932

To the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Judicial Circuit:

Your Petitioner, R. F. Dasher, President of the bankrupt corporation above named, conceiving himself aggrieved by the Order made by the Honorable Alexander Akerman, one of the Judges of the United States District Court for the Southern District of Florida, sitting in bankruptcy, on the 26th day of April, A. D. 1932, denying the Petition for review filed by your Petitioner, and affirming an order made by H. P. Baya, Referee in charge of said bankruptcy, [fol. 38] files this, his Petition, addressed to the discretion of this Honorable Court, for leave to appeal in matter of law from such order of the District Court, sitting in bankruptcy.

Petitioner refers to the Assignment of Errors filed herein by him simultaneously with this petition as setting

forth the errors made by the Court below and stating the grounds for this appeal, and makes said Assignment of Errors a part hereof.

Petitioner represents that on an involuntary petition in bankruptcy filed in the above Court on the 23rd day of February, A. D. 1931, the above named, Wauchula Central Pharmacy, Inc., was thereafter duly adjudged bankrupt, whereupon further proceedings therein were duly referred to H. P. Baya, Esquire, one of the Referees of said Court in Bankruptcy, before whom such proceedings thereafter were had, as resulted in the appointment of Frank E. Cooper, as Trustee of said bankrupt's estate and effects, who thereupon qualified as such and has ever since been, and now is the duly qualified and acting trustee in bankruptcy herein.

Thereafter, subsequent to the examination of your Petitioner as President of said bankrupt corporation, and the taking of other evidence, said trustee in bankruptcy filed his petition with said Referee to require your Petitioner to turn over to him as such trustee in bankruptcy certain property not specifically described, as above set forth, to which petitioner filed a response. Thereupon, after the taking of additional evidence, said Referee in Bankruptcy entered his Order on the 10th day of December, A. D. 1931, making findings of fact and directing and commanding your Petitioner to turn over within 10 days from said date the property described as aforesaid. Whereupon, your Petitioner duly filed his Petition for Review of said Order, and said Referee duly filed his Certificate, accompanied by [fol. 39] a copy of said Order containing findings of fact, the evidence upon which the same were based, and a statement of the points involved.

Said Petition for Review came on to be heard before the Honorable Alexander Akerman, one of the Judges of said Court, who upon consideration thereof entered an Order confirming the Order of the Referee in words and figures following, to-wit:

"Frank E. Cooper, as Trustee in Bankruptcy in the above matter, having on July 7th, 1931, filed a petition with the Referee to require R. F. Dasher, President and sole executive manager of the bankrupt corporation, to turn over and deliver certain assets of the bankrupt corporation

to the said Trustee, and the said R. F. Dasher having objected to the jurisdiction of the Referee and of this Court to inquire into the matters referred to in the said petition in a summary proceedings, and said objection having been overruled by the Referee, and, thereafter the said R. F. Dasher having made answer on July 14th, 1931, and, thereafter after the receipt of voluminous evidence the Referee having on December 10th, 1931, entered an Order directing the said R. F. Dasher to turn over and deliver to the Trustee in Bankruptcy herein certain enumerated assets found by the said Referee to have been withheld by the said R. F. Dasher from the said Trustee, minutely described with great particularity in the said Order, and, also, certain other assets consisting of goods, wares and merchandise of a value of Nineteen Thousand One Hundred Fifty-seven and 66/100 Dollars ($19,157.66), being the character of goods, wares and merchandise such as was shown by the proofs of claim in this cause to have been purchased by the bankrupt corporation, and such as is usually carried, sold, and offered for sale in drug stores of the character operated by the bankrupt corporation prior to bankruptcy, and being exclusively goods, wares and merchandise purchased [fol. 40] by and delivered to the said bankrupt corporation and withheld by the said R. F. Dasher from the officers of this Court at the time of bankruptcy, and the said R. F. Dasher having brought the said Order here upon his petition for review and the Court having heard and considered the arguments of respective counsel and having considered the error assigned by the said R. F. Dasher, and it appearing to the satisfaction of the Court that the said Order of the Referee is just and correct and conforms to the law and the evidence and is supported by clear and convincing evidence, and this Court having announced at the oral argument of this cause April 9th, 1932, its intention to enter this Order confirming the said Order of the Referee, but, having postponed the entry thereof until this date at the request of the Attorneys for the said R. F. Dasher,

It is hereby ordered, adjudged and decreed that the Order of the Honorable H. P. Baya, Referee in Bankruptcy, entered in the above entitled cause on December 10th, 1931, requiring the said R. F. Dasher to turn over and deliver to Frank E. Cooper, as Trustee herein, the property herein-

above referred to, be, and the same is, hereby approved, sustained and affirmed.

It is further ordered, adjudged and decreed that said R. F. Dasher do, within one (1) day from this date, turn over and deliver unto the said Frank E. Cooper, as such Trustee, each, all and every of the property mentioned, described, and/or referred to in the said Order.

Done and ordered at Chambers, this 26th day of April, A. D. 1932.

(Signed) Alexander Akerman, District Judge.

Petitioner avers that said Order of the District Court is erroneous in matter of law in the particulars specified in [fol. 41] the Assignment of Errors, herewith filed, and said errors are such as will result in a wrongful adjudication against your Petitioner which may subject him to imprisonment or other serious punishment for failure to comply with the said Order, although he is now, and has ever been since the filing of the involuntary petition in bankruptcy against him wholly unable to comply therewith.

Wherefore your Petitioner prays that the discretion of this Court be exercised in favor of his appeal in matter of fact and/or law herein; that a citation be issued directed to said Frank E. Cooper, Trustee in Bankruptcy of said Estate of Wauchula Central Pharmacy, Inc., bankrupt, who is made respondent hereto, commanding him to appear before this Honorable Court to do and receive what may appertain to justice in the premises; that a transcript of such part of the record and proceedings herein as may be material to the determination of the question of law raised by the assignment of errors aforesaid, duly authenticated, be transmitted to this Honorable Court by the Clerk of the said Court of Bankruptcy; that upon the allowance and the hearing of petitioner's appeal the order of April 26, 1932, be reversed and vacated, and said Court be directed to reverse and vacate the order of the Referee in Bankruptcy entered on the 10th day of December, 1931, and that this petitioner be allowed to prosecute this appeal in forma pauperis, and that petitioner have such other and further relief as may comport with legal principles properly applicable.

Burton G. Henson, Attorney for Petitioner.

Affidavit of insolvency attached hereto and made a part hereof.

[fol. 42] *Duly sworn to by R. F. Dasher. Jurat omitted in printing.*

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed May 25, 1932

Comes now R. F. Dasher, the party against whom, as President of the bankrupt corporation, an order was made on the 26th day of April, A. D. 1932, affirming an order of the Referee requiring him to turn over to the Trustee in Bankruptcy herein certain property in said order referred to, and having prayed for the allowance of an appeal from said order, assigns the following as the errors committed by the Bankruptcy Court in its said order of April 26th, 1932:

I

Because it affirmed the order of the Referee entered on December 10th, 1931, requiring the petitioner to turn over [fol. 43] to respondent the goods therein referred to without any evidence that the petitioner had possession of the goods or that petitioner had ability to secure them.

II

Because neither said order nor the order of the Referee, which was thereby affirmed, was based upon sufficient findings of fact to warrant same.

III

Because the same was not based upon or warranted by sufficient findings of fact, in that there was no finding of the ability of petitioner to obey the same at any time since the filing of the petition in bankruptcy.

IV

Because neither said order nor the order of the Referee thereby affirmed sufficiently identified, designated or de-

scribed the property ordered to be turned over by petitioner.

V

Because neither said order nor the order of the Referee thereby affirmed described the property ordered to be turned over with reasonable certainty in order to assure its identity as property belonging to the bankrupt estate.

VI

Because neither said order nor the order of the Referee thereby affirmed directed petitioner to turn over to respondent any specific goods found to have belonged to the bankrupt, but simply directed the delivery of goods "being the character of goods, wares and merchandise such as was [fol. 44] shown by the proofs of claim in this cause to have been purchased by the bankrupt corporation, and such as is usually carried, sold and offered for sale in drug stores of the character operated by the bankrupt corporation prior to bankruptcy, and being exclusively goods, wares and merchandise purchased by and delivered to the said bankrupt corporation and withheld by the said R. F. Dasher from the officers of this Court at the time of bankruptcy."

VII

Because the findings made by the Referee upon which said order was based did not warrant the same, in view of the positive denial in the answer of petitioner to the petition praying such an order that he had either possession or control of any goods, wares or merchandise belonging to the bankrupt estate.

VIII

Because the order attempted in a collateral in bankruptcy proceeding to compel petitioner to deliver to the Trustee in Bankruptcy property not shown to have been transferred to him from the Bankrupt within four months before the filing of the involuntary petition in bankruptcy and while the Bankrupt was insolvent.

IX

Because there was no evidence that petitioner received any property from the bankrupt after the filing of the in-

voluntary petition in Bankruptcy, or within four months prior thereto.

[fol. 45]

X

Because the evidence does not show that petitioner "concealed" any property belonging to the bankrupt within the definition of the Bankruptcy Act.

XI

Because your petitioner is not an attorney, counselor at law, solicitor in equity or proctor in admiralty and the Referee had no right or authority to re-examine any transfer of property to this petitioner on the petition of the Trustee or any creditor, as was done in the instance complained of, but the rights of the Trustee, if any, should be established by a suit in equity in the nature of a creditor's bill.

XII

Because the order of the Referee and/or Referee does not establish the money value or present existence of said goods or direct that their money value be turned over to the Trustee.

XIII

Because the Trustee, pursuant to the direction of the Court, did not submit the controversy between the Trustee and your petitioner in the settlement of the estate to arbitration as approved by Section 26 of the Bankruptcy Laws of the United States.

XIV

Because the order is arbitrary and unjust.

Wherefore petitioner prays that the order appealed from may be vacated, set aside and reversed.

Burton G. Henson, Attorney for Petitioner.

[fol. 46] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING PETITIONER TO PERFECT APPEAL, ETC.

The Petition for an Appeal in forma pauperis from an order of this Court dated the 26th day of April 1, 1932,

together with the Assignment of Errors having been filed in this Court on the 25th day of May, 1932, together with an Affidavit of Insolvency on behalf of the Petitioner, R. F. Dasher, in the above entitled cause, it is,

Ordered that the petition in forma pauperis be denied, but said Petitioner is hereby allowed to perfect his appeal and is allowed sixty (60) days from May 25th, 1932, in which to prepare and file Transcript and tender and file a condensed and narrative statement of the evidence submitted before the Referee in Bankruptcy or so much of same as to present the questions of law and fact to which the Petitioner assigns error, but nothing in this order shall obligate the Petitioner to file a statement of the testimony should he rely on errors appearing on the face of the record alone.

It is further ordered that citation be prepared and issued by the Clerk of this Court directed to Frank E. Cooper, Trustee in Bankruptcy in the above entitled cause.

Done and ordered in Chambers in Tampa, Florida, this the 2nd day of June, A. D. 1932.

Alexander Akerman, Judge.

[fol. 47] IN UNITED STATES DISTRICT COURT

NOTICE AS TO CONTENTS OF TRANSCRIPT OF RECORD

To the Honorable C. Edmund Worth, attorney for trustee in bankruptcy, First National Bank building, Tampa, Florida:

Please take notice that the undersigned has in accordance with the Order Allowing Appeal entered by the District Judge on the 2nd day of June 1932 allowing the appeal but denying the same in forma pauperis over the objections of the Attorney for the Trustee, has caused to be made a Transcript of the Record in this cause of all those Petitions, Answers, Orders and Decrees pertaining to the appeal of R. F. Dasher from the turn-over order of the Referee in Bankruptcy dated the 10th day of December 1931, and has on account of the financial inability of the said R. F. Dasher to pay for the preparation and printing of a narrative statement of the evidence submitted before the

Trustee in Bankruptcy, caused the statement of the testimony to be omitted from said record and in accordance with the Order of Appeal issued by the District Judge the Appellant has elected to rely upon errors appearing on the face of the record.

Further take notice that if you know of any pertinent portion of the record necessary for the proper adjudication of the appeal taken, please give notice to the Clerk to include the same in the Transcript of Record, or a supplemental record, within the time allowed by the Rules of Court.

For your further information the prepared record now consists of the following:

[fol. 48] (1) Amended Involuntary Petition in Bankruptcy.

(2) Order of Adjudication and Reference.

(3) Petition of Frank E. Cooper, Trustee in Bankruptcy, for an order upon R. F. Dasher, President of the bankrupt corporation, to turn over assets of the bankrupt fraudulently withheld.

(4) Response of R. F. Dasher to the Petition to turn over assets.

(5) Order of H. P. Baya, Referee in Bankruptcy, directing R. F. Dasher to turn over assets, including findings of fact.

(6) Petition of R. F. Dasher for review of said Order by the District Judge.

(7) Certificate of Review directed to the District Judge by the Referee in Bankruptcy.

(8) Order of the District Judge on review sustaining the Order of the Referee requiring R. F. Dasher to turn over assets.

(9) Petition of R. F. Dasher for allowance of Appeal from Order to turn over assets to the Court of Appeals.

(10) Assignment of Errors by R. F. Dasher upon his said Petition for allowance of Appeal.

(11) Order Allowing Appeal.

(12) Citation of Appeal.

This the 19th day of July, A. D. 1932.

Burton G. Henson, Attorney for R. F. Dasher, Appellant.

[fol. 49] Certificate

I, Burton G. Henson, do hereby certify that I am attorney for R. F. Dasher, Appellant in the above matter; that I personally delivered to C. Edmund Worth, attorney for the Trustee in Bankruptcy in the above entitled cause a true copy of the above Notice; that previous thereto a copy of the Petition for Appeal and the Assignment of Errors was delivered to the said C. Edmund Worth as well as a copy of the Order of Appeal together with a copy of the Citation of Appeal in the above cause.

That the said original Transcript of the Record prepared by the Clerk is, and has been accessible to the said Attorney for the Trustee for a long period of time. The same has been filed with the Clerk of the United States District Court for the Southern District of Florida with instructions to forward the same to the Clerk of the Circuit Court of Appeals at New Orleans, Louisiana on or before sixty days from May 25th, 1932, with whatever pleadings and record filed in said cause on or before June 2nd, 1932, exclusive of the testimony, that the Attorney for the Trustee may desire to prepare, without expense to the Appellant, pertaining to the said turn-over order filed in said cause.

This the 19th day of July, A. D. 1932.

Burton G. Henson, Attorney for R. F. Dasher, Appellant.

[fol. 50] In United States District Court

Præcipe for Transcript of Record

To the clerk of the above-styled court:

You will please make up a Transcript of Record for the United States Circuit Court of Appeals for the Fifth Circuit in the above styled cause on the Petition for Appeal of R. F. Dasher, and include therein the following papers and cause the same to be filed with the Clerk of the Circuit Court of Appeals on or before sixty (60) days from May 25th, 1932:

1. Amended Involuntary Petition in Bankruptcy.
(2) Order of Adjudication and Reference.

(3) Petition of Frank E. Cooper, Trustee in Bankruptcy, for an order upon R. F. Dasher, President of the bankrupt corporation, to turn over assets of the bankrupt fraudulently withheld.

(4) Response of R. F. Dasher to the Petition to turn over assets.

(5) Order of H. P. Baya, Referee in Bankruptcy, directing R. F. Dasher to turn over assets, including findings of fact.

(6) Petition of R. F. Dasher for review of said Order by the District Judge.

(7) Certificate of Review directed to the District Judge by the Referee in Bankruptcy.

(8) Order of the District Judge on review sustaining the Order of the Referee requiring R. F. Dasher to turn over assets.

(9) Petition of R. F. Dasher for allowance of Appeal from Order to turn over assets to the Court of Appeals.

[fol. 51] (10) Assignment of Errors by R. F. Dasher upon his said Petition for allowance of Appeal.

(11) Order Allowing Appeal.

(12) Citation of Appeal.

(13) Notice to C. Edmund Worth filed July 19th, 1932.

(14) Any affidavits or pleadings or orders that may be found or filed or requested by the attorney for the Trustee in Bankruptcy in the record in the above cause, pertaining to a turn over order entered on the 10th day of December, 1931, directed against R. F. Dasher, the appellant herein.

(15) Recite in its proper place the filing of this præcipe and insert the same in full.

(16) Attach to said Transcript of Record your certificate and the seal of this Court and cause the same to be filed in the Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

Inasmuch as the attorney for the Trustee in Bankruptcy has not as yet decided whether he desires any corrections, amendments, or additions to the above record filed in the Circuit Court of Appeals, you will please make up as a supplemental record any additional record that he so desires to file and forward the same to the Clerk of the Circuit Court of Appeals in accordance with his instructions.

Burton G. Henson, Attorney for Appellant.

Copy of the above præcipe for transcript of record received this the 21st day of July, A. D. 1932.

C. Edmond Worth, Attorney for Trustee in Bankruptcy.

[fol. 52] Clerk's certificate to foregoing transcript omitted in printing.

NOTE RE CITATION

Original citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * * * *

[fol. 53] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 6728

R. F. DASHER

versus

FRANK E. COOPER, Trustee in Bankruptcy of Wauchula Central Pharmacy, Inc., Bankrupt

ORDER ALLOWING APPEAL—December 20, 1932

It is ordered that the appeal applied for in the above numbered and entitled cause be allowed.

[fol. 54] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

MOTION TO DISMISS—Filed February 16, 1933

Now comes the Appellee in the above entitled cause, by his undersigned Attorney, under the protection of the

Special Appearance heretofore entered and without waiving the Motion to deny and to dismiss the appeal heretofore filed, and further moves to dismiss this appeal for the reason that the Appellant did not file with the Clerk of the above styled Court, at least fifteen days before the case was set for argument, twenty copies of a printed brief, and did not, within such time, furnish a copy thereof to counsel for the Appellee, in compliance with Rule XXIV of the Rules of the United States Circuit Court of Appeals, for the Fifth Circuit.

(Signed) C. Edmund Worth, Attorney for Appellee.

[File endorsement omitted.]

[fol. 55] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

NOTICE OF HEARING AND ACCEPTANCE OF COUNSEL FOR APPELLANT

To Honorable Burton G. Henson, attorney for appellant:

You will please take notice that appellee has filed additional motion to dismiss this appeal, copy of which is handed you herewith, and will call up for hearing both this Motion, and the former Motion heretofore filed, before the United States Circuit Court of Appeals for the Fifth Circuit on Tuesday, February 21st, 1933, at nine o'clock (9:00) A. M. or as soon thereafter as Counsel may be heard, and govern yourself accordingly.

(Signed) C. Edmund Worth, Attorney for Appellee.

I hereby accept notice of the above hearing, as well as copy of said additional Motion to Dismiss, this 15th day of February, A. D. 1933.

(Signed) Burton G. Henson, Attorney for Appellant.

[fol. 56] Minute entry of argument and submission, February 21, 1933, omitted in printing.

[fol. 57] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 6728

R. F. DASHER, Appellant,

versus

FRANK E. COOPER, Trustee in Bankruptcy of Wauchula Central Pharmacy, Inc., Bankrupt, Appellee

Appeal from the District Court of the United States for the Southern District of Florida

Before Bryan, Foster and Hutcheson, Circuit Judges

OPINION OF THE COURT—Filed March 10, 1933

HUTCHESON, Circuit Judge:

Upon the petition of the trustee for a turnover order, the referee found that after making full allowance for all merchandise, received by and otherwise accounted for, to the proper officers of the court, there was a balance of merchandise in the hands of appellant as president, manager, [fol. 58] and sole custodian of the bankrupt corporation at the time of the bankruptcy unaccounted for, of the value of $19,157.66, "of a class of merchandise shown by the proofs of claims to have been purchased on the credit of the bankrupt corporation, and delivered to it, and of such a class of merchandise as it usually carried and sold in a retail drug store, but which is not capable of more specific description, which specific description is known only to the respondent in the cause."

The turnover order based on this finding followed it literally. It required the appellant to turn over to the trustee $583.69 of merchandise specifically described in the order, and further ordered him to turn over and deliver to the trustee "other goods, wares and merchandise of the bankrupt corporation, purchased and owned by the bankrupt, and withheld from the officers of the court at the time of the bankruptcy by him, of the value of $19,157.66, said goods, wares and merchandise being of the character of goods, wares and merchandise such as is shown by the

proofs of claim in this cause to have been purchased by the bankrupt corporation, and such as is usually carried, sold and offered for sale in drug stores of the character operated by the bankrupt corporation prior to bankruptcy, and being exclusively goods, wares and merchandise purchased by and delivered to the bankrupt corporation and withheld by Dasher from the officers of this court at the time of the bankruptcy."

This appeal is from a decree affirming that order.

Appellee, urging objections to the manner and form of the appeal, moves to dismiss it. None of the grounds urged are fatal to the review. The order complained of "represented a serious step in the bankruptcy proceedings * * * one in which coercive methods are probable and are foreshadowed." Oriel vs. Russell, 278 U. S. 363-4. Whether the order is a valid one presents a question of [fol. 59] grave importance not only to appellant, but in the administration of bankrupt estates. The motion to dismiss the appeal is denied.

Appellant, claiming that he is a third party and not subject to summary orders, attacks the jurisdiction of the court to make the turnover order against him. He urges against the order that it is void as to the specifically described goods, because not in the alternative for the goods or their money equivalent. He also, and this is his main point, attacks the order as to the undescribed and unidentified merchandise as wholly void for indefiniteness.

We think it quite clear that the court had jurisdiction to proceed summarily against appellant, and that the complaint against the turnover order as to the definitely described goods is without merit. If, as the referee finds, appellant, the president, manager, and sole custodian of the property of the bankrupt, has been "withholding from the officers of the court at the time of adjudication in bankruptcy and at all subsequent times" the goods specifically described in the order, he was subject to the turnover order entered as to those goods. If when he comes to comply with the order, he can show that the specifically described goods or any part of them are no longer in his possession, since the order is not a penal but an administrative one, the court has the power, though the turnover order does

not so provide, to permit the payment of their money equivalent. That much of the order, therefore, is affirmed.

The case stands quite differently, however, as to the vague and incoherent order for the turnover of the unidentified and unidentifiable merchandise "of the cost price value of $19,157.66." This order is void. The jurisdiction here exercised is a civil jurisdiction; "it constitutes a mere step in [fol. 60] the proceedings to administer the assets of the bankrupt, as provided by law and in aid of the seizure of those assets and their proper distribution." Oriel vs. Russell, 278 U. S. 363. It is not the exercise of a jurisdiction to imprison to compel payment of a debt, or of a criminal jurisdiction to imprison in default of the payment of a fine. The first is prohibited by the Constitution; the second is provided for in the Penal Code. The jurisdiction asserted is based upon the power of courts to compel compliance with specific orders which the person subjected to them is able to comply with. Jurisdiction to make the orders depends upon a specific finding on clear and satisfactory evidence that the respondent can comply with the order because the moneys or goods ordered turned over are in his possession. Such orders must be based upon clear and convincing evidence; they must be couched in definite and comprehensible terms, they must leave no uncertainty as to what is ordered to be done, no doubt whether goods or property tendered in satisfaction of the order are those ordered surrendered. The questioned order violates these requirements. It cannot be complied with. It describes nothing, it identifies nothing. The respondent himself could not safely undertake to comply with it, nor could any officer of the court safely compel him. It has always been the rule in this circuit that such an order is void. Samuel vs. Dodd, 142 Fed. 68; Opinions from other circuits, citing, approving and adopting the rule, are Miller vs. Harbaugh, 54 Fed. (2) 612; In re Goldman, 62 Fed. (2) 421.

The turnover order, in so far as it directed the turnover of the specifically described merchandise, in the amount of $583.69, is affirmed. In so far as it directed the turnover of unnamd, undescribed, and unidentified articles of merchandise to the extent of $19,157.66 it is reversed with directions to vacate that part of the order and all proceed- [fol. 61] ings which have been taken under it.

[fol. 62] IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 6728

R. F. DASHER

versus

FRANK E. COOPER, Trustee in Bankruptcy of Wauchula Central Pharmacy, Inc., Bankrupt

JUDGMENT—March 10, 1933

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the turnover order of the said District Court appealed from in this cause in so far as it directed the turnover of the specifically described merchandise, in the amount of $583.69 is affirmed, and in so far as it directed the turnover of unnamed, undescribed, and unidentified articles of merchandise to the extent of $19,157.66 it is reversed, with directions to vacate that part of the order and all proceedings which have been taken under it;

It is further ordered, adjudged and decreed that the appellee, Frank E. Cooper, Trustee in Bankruptcy of Wauchula Central Pharmacy, Inc., Bankrupt, be condemned to pay the costs of this cause in this Court, in due course of the administration of the estate of said Bankrupt.

[fol. 63] IN UUITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

MOTION FOR ORDER STAYING MANDATE—Filed March 23, 1933

Now comes the Appellee in the above entitled cause and gives notice that he intends to apply to the Supreme Court of the United States of America for Writ of Certiorari to

the Decree of this Court entered March 10th, 1933, and moves the Court to enter herein an Order staying the issuance of the Mandate of this Court as required by Rule XXXII of the Rules of this Court for the period of three (3) months and thereafter until such Petition for Certiorari if filed within three months shall be acted upon by the Supreme Court of the United States of America, as provided by Title 28, Section 350 of The United States Code (Acts of Congress, February 13, 1925, Section 8) and to fix the terms and conditions upon which such Stay shall be granted, and in conformity with Rule 38 (6) of the Rules of The Supreme Court of the United States of America as amended May 31st, 1932.

(Signed) C. Edmund Worth, Solicitor for Appellee.

[fol. 64] In United States Circuit Court of Appeals for the Fifth District

[Title omitted]

Order Staying Mandate

On consideration of the application of the appellee in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 23rd day of March, 1933.

(Signed) N. P. Bryan, United States Circuit Judge.

[fol. 65] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 66] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 15, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,585. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 30. Frank E. Cooper, as trustee in bankruptcy of Wauchula Central Pharmacy, Inc., bankrupt, petitioner, vs. R. F. Dasher. Petition for a writ of certiorari and exhibit thereto. Filed April 18, 1933. File No. 37,585.